

PETITION FOR WRIT OF HABEAS CORPUS: 28 USC §2254 (Rev. 9/10)
ADOPTED BY ALL FEDERAL COURTS IN TEXAS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
Beaumont DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

OCT - 9 2018

PETITION FOR A WRIT OF HABEAS CORPUS BY
A PERSON IN STATE CUSTODY

BY
DEPUTY _____

Douglas Grant Marshall
PETITIONER
(Full name of Petitioner)

MARK W. Stiles / State Prison
CURRENT PLACE OF CONFINEMENT

vs.

#476513
PRISONER ID NUMBER

LORI Davis, [TDCJ-CID] Dir,
RESPONDENT
(Name of TDCJ Director, Warden, Jailor, or
authorized person having custody of Petitioner)

1:18cv505
CASE NUMBER
(Supplied by the District Court Clerk)

INSTRUCTIONS - READ CAREFULLY

1. The petition must be legibly handwritten or typewritten and signed and dated by the petitioner, under penalty of perjury. Any false statement of an important fact may lead to prosecution for perjury. Answer all questions in the proper space on the form.
2. Additional pages are not allowed except in answer to questions 11 and 20. Do not cite legal authorities. Any additional arguments or facts you want to present must be in a separate memorandum. The petition, including attachments, may not exceed 20 pages.
3. Receipt of the \$5.00 filing fee or a grant of permission to proceed *in forma pauperis* must occur before the court will consider your petition.
4. If you do not have the necessary filing fee, you may ask permission to proceed *in forma pauperis*. To proceed *in forma pauperis*, (1) you must sign the declaration provided with this petition to show that you cannot prepay the fees and costs, and (2) if you are confined in TDCJ-CID, you must send in a certified *In Forma Pauperis* Data Sheet form from the institution in which you are confined. If you are in an institution other than TDCJ-CID, you must send in a certificate completed by an authorized officer at your institution certifying the amount of money you have on deposit at that institution. If you have access or have had access to enough funds to pay the filing fee, then you must pay the filing fee.

1 of 14 (p. # (1) + (2) + (1) = 4 add pgs.
10514 (p. # 484(a); p. 62(a)(b); p. 92(a);

5. Only judgments entered by one court may be challenged in a single petition. A separate petition must be filed to challenge a judgment entered by a different state court.
6. Include all of your grounds for relief and all of the facts that support each ground for relief in this petition.
7. Mail the completed petition and one copy to the U. S. District Clerk. The "Venue List" in your unit law library lists all of the federal courts in Texas, their divisions, and the addresses for the clerk's offices. The proper court will be the federal court in the division and district in which you were convicted (for example, a Dallas County conviction is in the Northern District of Texas, Dallas Division) or where you are now in custody (for example, the Huntsville units are in the Southern District of Texas, Houston Division).
8. Failure to notify the court of your change of address could result in the dismissal of your case.

PETITION

What are you challenging? (Check all that apply)

- ☒ A judgment of conviction or sentence, (Answer Questions 1-4, 5-12 & 20-25)
 probation or deferred-adjudication probation.
- ☐ A parole revocation proceeding. (Answer Questions 1-4, 13-14 & 20-25)
- ☐ A disciplinary proceeding. (Answer Questions 1-4, 15-19 & 20-25)
- ☐ Other: _____ (Answer Questions 1-4, 10-11 & 20-25)

All petitioners must answer questions 1-4:

Note: In answering questions 1-4, you must give information about the conviction for the sentence you are presently serving, even if you are challenging a prison disciplinary action. (Note: If you are challenging a prison disciplinary action, do not answer questions 1-4 with information about the disciplinary case. Answer these questions about the conviction for the sentence you are presently serving.) Failure to follow this instruction may result in a delay in processing your case.

- ① Name and location of the court (district and county) that entered the judgment of conviction and sentence that you are presently serving or that is under attack: The 268th Dist.-Ct.
of Fort Bend City, 301 Jackson St., Richmond, TX,
77469.
- ② Date of judgment of conviction: March 4, 1988
- ③ Length of sentence: 99 yrs
- ④ Identify the docket numbers (if known) and all crimes of which you were convicted that you wish to challenge in this habeas action: 17,047-A; 1st Degree Murder,

Judgment of Conviction or Sentence, Probation or Deferred-Adjudication Probation:

5. What was your plea? (Check one) ☒ Not Guilty ☐ Guilty ☐ Nolo Contendere

6. Kind of trial: (Check one) ☒ Jury ☐ Judge Only

7. Did you testify at trial? ☒ Yes ☐ No

8. Did you appeal the judgment of conviction? ☒ Yes ☐ No

9. If you did appeal, in what appellate court did you file your direct appeal? The 1st CT. of Appeals

301 Fannin, Houston, TX, 77002 - 2066 Cause Number (if known): 01-88-00263 CR

What was the result of your direct appeal (affirmed, modified or reversed)? Affirmed

What was the date of that decision? don't have the dates.

If you filed a petition for discretionary review after the decision of the court of appeals, answer the following:

Grounds raised: _____

Result: _____

Date of result: _____ Cause Number (if known): _____

If you filed a petition for a writ of certiorari with the United States Supreme Court, answer the following:

Result: _____

Date of result: _____

10. Other than a direct appeal, have you filed any petitions, applications or motions from this judgment in any court, state or federal? This includes any state applications for a writ of habeas corpus that you may have filed. ☒ Yes ☐ No

11. If your answer to 10 is "Yes," give the following information:

1st Name of court: The 268th Dist. CT. of Fort Bend City, TX.

Nature of proceeding: Habeas Corpus - state writ 11.07: HC #5 1, 2, & 3;

Cause number (if known): 17, 047-A

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court: don't have the recorded dates.

Grounds raised: Ineffective Assist. of Counsel at Trial & on Appeal (Direct); Prosecutorial Misconduct; Judge allowed Crim. Contempt by Jurors, etc.

Date of final decision: don't have recorded dates.

What was the decision? Denied w/o written order & w/o Prejudice.

Name of court that issued the final decision: CT. of crim. Appeals of TX.

2nd As to any second petition, application or motion, give the same information:

Name of court: The 268th District of Fort Bend CTy.

Nature of proceeding: Habeas Corpus - state writ - 11.07 of criminal Appeals
- To make Jg. Elliot, Read the case"

Cause number (if known): 17,047-A

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court: don't have recorded dates;

Grounds raised: Ineffective Assist. of Counsel at Trial & on Appeal; Prosecutorial Misconduct; Judge allowed (Crim. Contempt by Jurors).

Date of final decision: don't have dates.

What was the decision? Dismissed w/o written order, & w/o Prejudice.

Name of court that issued the final decision: CT. of criminal Appeals

If you have filed more than two petitions, applications or motions, please attach an additional sheet of paper and give the same information about each petition, application or motion.

12. Do you have any future sentence to serve after you finish serving the sentence you are attacking in this petition? ☐ Yes ☒ No

(a) If your answer is "Yes," give the name and location of the court that imposed the sentence to be served in the future: _____

(b) Give the date and length of the sentence to be served in the future: _____

3rd Petition, application or Motion, give the same information =

Name of Court: The 268th Dist. Ct. of Fort Bend Co., TX.

Nature of Proceedings: Habeas Corpus - State Writ - 11.07

Case # 17,047-A

Date (month, day, & year) you filed the Petition, application or Motion as shown by a file stamped date from the particular Ct.: don't have the recorded dates.

Grounds raised: Ineffective Assist. of Counsel at Trial & on Appeal; Prosecutorial Misconduct; Judge (allowed crim. contempt by Jurors against the LAW & the Facts).

Date of final decision: don't have recorded dates.

What was the final decision: Denied w/o written order & w/o Prejudice.

Name of Ct. that issued the final decision: Ct. of Crim. Appeals of TX.

Parole Revocation:

13. Date and location of your parole revocation: _____
14. Have you filed any petitions, applications or motions in any state or federal court challenging your parole revocation? ☐ Yes ☐ No

If your answer is "Yes," complete Question 11 above regarding your parole revocation.

Disciplinary Proceedings:

15. For your original conviction, was there a finding that you used or exhibited a deadly weapon?
☐ Yes ☐ No
16. Are you eligible for release on mandatory supervision? ☐ Yes ☐ No
17. Name and location of the TDCJ Unit where you were found guilty of the disciplinary violation:

Disciplinary case number: _____

What was the nature of the disciplinary charge against you? _____

18. Date you were found guilty of the disciplinary violation: _____
- Did you lose previously earned good-time days? ☐ Yes ☐ No

If your answer is "Yes," provide the exact number of previously earned good-time days that were forfeited by the disciplinary hearing officer as a result of your disciplinary hearing:

Identify all other punishment imposed, including the length of any punishment, if applicable, and any changes in custody status:

19. Did you appeal the finding of guilty through the prison or TDCJ grievance procedure?
☐ Yes ☐ No

If your answer to Question 19 is "Yes," answer the following:

Step 1 Result: _____

Date of Result: _____

Step 2 Result: _____

Date of Result: _____

All petitioners must answer the remaining questions:

20. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting them.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

- A. **GROUND ONE:** "Actual Innocents," Denied 4th, 5th, 6th, & 14th U.S. Const. amend.; - Due Process (Substantive & Procedural).

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- 1.) Petitioner "was not at scene of crime at time of crime & was never a suspect"; see HC #2 Police Testimony Exhibit.
- 2.) There were 2-witnesses of the 2-persons who were at the scene of the crime at the time of the crime; & the Judge @ Trial Reagan Clark, gave Jury instruction: "This

- B. **GROUND TWO:** _____
- _____
- _____
- _____
- _____
- _____

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Continued Ground # I.: Actual Innocents....

is the only law to Judge defendant by: "he must have been at The scene of the crime at the Time of the crime or you can not find him guilty. Even if you doubt he was there you can not find him guilty."

Petitioner asks Respondent to supply the ct. with these Portions of The Transcripts & HC Exhibits as Proof.

— 3.) Petitioner had an ALIBI: As Proof, Petitioner asks Respondent to provide this Portion of Transcripts & HC#2 Exhibits, etc., Too.

— 4.) The state admits that its agent (investigator), informed Petitioner of the explicit details of the crime, i.e. WHEN, WHAT, WHO, HOW, & WHY. Petitioner on witness stand: Defense atty. Steven Rocket Rosen, asked "You said someone told you about the crime The morning of the crime at Big Daddy's Donuts?" Petitioner "YES". Dist. atty. Brian Best response "You talking about me now?"

As Proof, Respondent Please provide this Portion of the Transcripts & HC#2 Exhibits be provided to this ct.

— 5.) State of TX. ordered a statement to be made: Prior to the statement, Sgt. Deputy Sheriff in Antrun City, MI. stated "I do not know that a crime has been committed." Petitioner said "Call Stafford, TX. & see if they are looking for [me] Petitioner for Murder!" He did, & returned saying "YES! they are looking for you & they want me to make a statement." And that a warrant was not issued prior to this event: approx. 1-year later from the alleged crime of Aug. 1985 - to - Sept. 1986.

As Proof, Petitioner asks Respondent to provide Sgt. Deputy Sheriff's Testimony & a copy of the 1st ct. of Appeals Record (12 pgs.) which also reflects Ineffective assist. of Counsel: [pg. #11] - reflects Dist. atty's opinion, i.e. "The Defense atty. has brought nothing to this ct. that it has jurisdiction over. The only ground for Appeal in a jury trial is Juror's had insufficient evld. to find The defendant guilty. Therefore, This ct. must uphold juror's verdict of guilty." The Judge affirmed conviction of trial-ct.

Continued Ground #I: Actual Innocent:

— 6.) No [lawfully] impaneled "Grand Jury". If there was a [lawful] impaneled "Grand Jury": it should have been instructed that Petitioner was an actual was an "Actual Innocent" & "not at the scene of the crime at the time of the crime, & was never a suspect"; & had an "alibi". Therefore, can not find him "Guilty"; & state wanted a statement. See Police Testimony HC#2 Exhibit, & Alibi Exhibit; as Proof, Respondent Please supply this Ct. with the minutes from the [illeged] grand jury hearing; &

a.) was the Grand Jury & Trial-Ct., or Appeal-Ct. instructed of how statement was brought about [4 above], Police informing Petitioner of explicit details of a Capital Murder case(s), in order to create a new suspect or new evld. because it needed it to reopen an inactive Capital Murder investigation?

(b) Petition asks Respondent to supply this Ct. with the dates of filing HC#s 1, 2, & 3 & there Dismissal - denying each & every ground, use of Ct. records, & that no const. violation; That Petitioner has given the state of TX, every opportunity & Ct. of crim. appeals to investigate & resolve this matter: & dates of "denied without written order, etc.,

Petitioner Thanks you for your diligent earnest co-operation in resolving this. Sincerely,

C. **GROUND THREE:** _____

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

D. **GROUND FOUR:** _____

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

21. Relief sought in this petition: 1.) Complete Acquittal of all charges;
2.) Case To be Published; 3.) Full restoration of all Constitutional
rights, as a free citizen of the U.S.A.; 4.) To be released
from TDCJ-CID immediately; w/ wrongful Conviction (know-
ingly & intentionally) w/ vindictiveness - Injury award
Payment; 5.) a person in [Custody] under state ct. judgment who
seeks a determination That future custody under state-ct. Judgment
would violate the Constitution, Laws, or Treaties of the United States.

(22)

Have you previously filed a federal habeas petition attacking the same conviction, parole revocation or disciplinary proceeding that you are attacking in this petition? ☐ Yes ☒ No
If your answer is "Yes," give the date on which each petition was filed and the federal court in which it was filed. Also state whether the petition was (a) dismissed without prejudice, (b) dismissed with prejudice, or (c) denied.

If you previously filed a federal petition attacking the same conviction and such petition was denied or dismissed with prejudice, did you receive permission from the Fifth Circuit to file a second petition, as required by 28 U.S.C. § 2244(b)(3) and (4)? ☐ Yes ☐ No

(23)

Are any of the grounds listed in question 20 above presented for the first time in this petition? ☐ Yes ☒ No

If your answer is "Yes," state briefly what grounds are presented for the first time and give your reasons for not presenting them to any other court, either state or federal.

(24)

Do you have any petition or appeal now pending (filed and not yet decided) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," identify each type of proceeding that is pending (i.e., direct appeal, art. 11.07 application, or federal habeas petition), the court in which each proceeding is pending, and the date each proceeding was filed. _____

(25)

Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

- (a) At preliminary hearing: Steven Rocket Rosen (Esq.)
- (b) At arraignment and plea: None
- (c) At trial: Steven Rocket Rosen (Esq.)
- (d) At sentencing: Steven Rocket Rosen (Esq.)
- (e) On appeal: Steven Rocket Rosen (Esq.)
- (f) In any post-conviction proceeding: None

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

Timeliness of Petition:

26. If your judgment of conviction, parole revocation or disciplinary proceeding became final over one year ago, you must explain why the one-year statute of limitations contained in 28 U.S.C. § 2244(d) does not bar your petition.¹ *McQuinn v. Perkins*, 133 S.Ct. 1924

pg. [1]: Decision; Procedural Posture: overview.

< * SEE ATTACHED pg. 9 (a) preceding this pg.

DM

¹ The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), as contained in 28 U.S.C. § 2244(d), provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

(26.) Timeliness of Petition:

In *McQuayin v. Perkins*, 133 S.Ct 1924 (2017) [P.#1]: Decision; Procedural Posture; Overview: "Although the 6th cir. found that inmates' petition was untimely under 28 U.S.C. § 2244(d)(1), it held that his claim of Actual Innocents allowed him to pursue his Habeas Petition as if it had been filed '(timely), on time'."

[P.#2]: Headnote [5] Consideration of Const. claims - Actual Innocents - "the U.S. S.Ct. has recognized a prisoner otherwise subject to defenses of abusive or successive use of the WRIT of Habeas Corpus may have his Fed. Const. claim considered on the merits if he makes a showing- [proper] of Actual Innocents. In other words, "a credible showing of Actual Innocents may allow a Prisoner to pursue his Const. claims on the merits NOT withstanding the existence of a procedural-bar to relief. This rule, or fundamental miscarriage of Justice exception is grounded the equitable discretion of Habeas-Ct.^s To see that Fed. Const. errors do not result in the incarceration of innocent persons."

(Ginsberg, J., joined by Kennedy, Breyer, Sotomayor & Kagan, J.J.).

N/A

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for a Writ of Habeas Corpus was placed in the prison mailing system on

10-2-18 (month, day, year).

Executed (signed) on 10-2-18 (date).

Douglas G. Marshall
Signature of Petitioner (required)

Petitioner's current address: Douglas Grant Marshall #476513, 3060
FM 3514/Stiles, Beaumont, TX. 77705